

TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:

CC DOCKET NO. 94-11

TELEPHONE AND DATA SYSTEMS, INC./
WISCONSIN RSA No. 8, INC./
UNITED STATES CELLULAR OPERATING COMPANY

Wisconsin 8 (Vernon) Rural Service Area

DATE OF CONFERENCE: July 12, 1994

VOLUME: 2

PLACE OF CONFERENCE: Washington, D.C.

PAGES: 23-64

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 WISCONSIN RSA No. 8, INC./) CC Docket No. 94-11
 UNITED STATES CELLULAR OPERATING COMPANY)
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 Wisconsin 8 (Vernon) Rural Service Area)
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The above-entitled matter came on for conference pursuant to Notice before Joseph P. Gonzalez, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 4 on Tuesday, July 12, 1994, at 3:05 p.m.

APPEARANCES:

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8 On behalf of Chief, Common Carrier Bureau:

9 JOSEPH PAUL WEBER
10 Federal Communications Commission
Common Carrier Bureau
11 1919 M Street
Washington, D.C. 20554

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25	Conference began: 3:05 p.m. Conference Ended: 4:05 p.m.

P R O C E E D I N G S

JUDGE GONZALEZ: This is the conference that was called at the request of the Common Carrier Bureau and it concerns the application of Telephone and Data Systems, Inc. -- Public Cellular Telecommunications Radio Service on Frequency Block B in Market 715, Wisconsin 8 Vernon, Rural Service Area, and the date is July 12th, 1994 and the time is 3:05 in the afternoon. Mr. Weber, I understand you have -- you're prepared to make your oral motion at this time?

MR. WEBER: Yes, I am, Your Honor, and I thank you for allowing us the opportunity to present this motion today. We believe the issue we're going to present is a crucial one. I am Joseph Weber and I here today on behalf of the Acting Chief, Common Carrier Bureau, the Wisconsin 8 settling parties, Louisiana CGSA, Inc., GTE Mobile Net and Portland Cellular and we are jointly filing this motion. On behalf of the Bureau, I informally requested upon all the parties that their witnesses be sequestered during the depositions of this proceeding. All have agreed except for Mr. Belendiuk. The first the Bureau learned of Mr. Belendiuk's intention upon attending the depositions was last week from Mr. Belendiuk's counsel. I --

JUDGE GONZALEZ: I'm sorry, what was that? Mr. Belendiuk wants to attend the depositions of the other witnesses?

1 MR. WEBER: That is correct.

2 JUDGE GONZALEZ: Thank you.

3 MR. WEBER: And I requested that counsel speak to
4 Mr. Belendiuk to tell him of the Bureau's concerns of
5 Mr. Belendiuk's presence during those depositions.
6 Unfortunately, Mr. Belendiuk was out of town last week and
7 counsel was unable to speak to him and the Bureau only
8 received confirmation that Mr. Belendiuk intends upon
9 attending the depositions yesterday and that is the reason for
10 -- and the first deposition Mr. Belendiuk intends upon
11 attending to our knowledge is on July 19th.

12 JUDGE GONZALEZ: Is that the first scheduled
13 deposition?

14 MR. WEBER: The first scheduled depositions were
15 yesterday. Mr. Belendiuk was not in attendance at those.
16 There's also a scheduled deposition on Thursday and to our
17 understanding Mr. Belendiuk does not intend on attending that
18 one either although Mr. Crispin I'm sure can speak to that.
19 But we do believe because of -- that July 19th may be the
20 first deposition he does intend upon attending.

21 JUDGE GONZALEZ: Who's going to be deposed?

22 MR. WEBER: John Brady and Pat Brady.

23 JUDGE GONZALEZ: And who are they?

24 MR. WEBER: They are SJI officials. Now, in this
25 proceeding the Bureau has been charged by the Commission with

1 the task of finding out what occurred during the
2 La Star (phonetic sp.) proceedings and we strenuously believe
3 that our ability to inquire and to test the memory of
4 witnesses as to events, transactions and communications to
5 determine what actually occurred must remain unfettered. Now,
6 Mr. Belendiuk will be one of the primary if not the primary
7 witness in this proceeding. He was La Star's counsel and this
8 proceeding is to determine whether or not one of the
9 principals of La Star was truthful in their testimony.
10 Moreover, there was much testimony in the previous proceeding
11 by the La Star principals about their interactions with, with
12 Mr. Belendiuk. Obviously, their counsel's testimony therefore
13 is crucial. Mr. Belendiuk's testimony about his role and his
14 dealings with La Star is also crucial, is also crucial. In
15 order to discover the truth behind the issues we must obtain
16 honest, uninfluenced testimony from Mr. Belendiuk as well as
17 all the other witnesses. Moreover, TDS has already shown a
18 possible predisposition to have Mr. Belendiuk be the focal
19 point of their defense. For instance, in their motion for a
20 continuance of all procedural dates, TDS stated in an analysis
21 of the HDO that, I quote, "Taken as a whole, Nelson's
22 testimony was that La Star's activities had been litigious,
23 that his primary contact had been with La Star's attorney,
24 Arthur Belendiuk, not SJI members of the management
25 committee", end quote. Because of Mr. Belendiuk's importance,

1 we cannot allow to have his testimony tainted, colored or
2 otherwise influenced by the testimony of other witnesses.
3 Moreover, we cannot allow Mr. Belendiuk's presence during the
4 depositions to cause any type of disruption to the depositions
5 while other witnesses are testifying. It is certain that
6 other witnesses will testify about their interactions and
7 communications with Mr. Belendiuk. We must ensure that these
8 witnesses are able to testify without being intimidated or
9 otherwise influenced by Mr. Belendiuk's presence during the
10 depositions. Now, Mr. Belendiuk was allowed to intervene as a
11 party to this proceeding but only on a very limited basis.
12 That limited basis being to confront and rebut adverse
13 allegations made against him and Mr. Belendiuk is not without
14 recourse to this regard. He is represented by counsel and I
15 am confident that Mr. Crispin, Mr. Belendiuk's counsel, has
16 made himself familiar enough with the facts to be able to
17 question any deponent that makes allegations against or
18 concerning Mr. Belendiuk's representations. Therefore, Mr.
19 Belendiuk certainly will receive full, competent and effective
20 representation through Mr. Crispin. Because the Bureau only
21 consented to Mr. Belendiuk's intervention on this limited
22 basis, the Bureau believes that Mr. Belendiuk's interests can
23 be served by counsel. And if you recall, Mr. Belendiuk was
24 allowed to intervene through a, through a consent motion and
25 the consent was given believing that this was going to be on a

1 | limited basis. We were not aware of Mr. Belendiuk's -- upon
2 | attending depositions at that point. Moreover, the deposition
3 | are not the place to make any necessary corrections to the
4 | record. If any allegations which are adverse to
5 | Mr. Belendiuk's reputation are made in the depositions,
6 | Mr. Belendiuk and his counsel can address those allegations
7 | during the trial. Now, the Bureau is not unsympathetic to the
8 | to Mr. Belendiuk's situation. The Bureau recognizes that the
9 | outcome in this proceeding could potentially harm
10 | Mr. Belendiuk professionally. That is why the Bureau
11 | consented to his intervention. However, if the Bureau knew
12 | that Mr. Belendiuk intended to disrupt this proceeding or
13 | otherwise cause mischief and to -- or intended to allow his
14 | testimony to be influenced by the testimony of others, it
15 | would not have agreed to allow Mr. Belendiuk to, to intervene.
16 | The Bureau as well as some of the other parties were wary of
17 | granting consent to Mr. Belendiuk's contention. We saw the
18 | potential of Mr. Belendiuk causing mischief through being
19 | granted party status. Counsel to Mr. Belendiuk assured us
20 | that this was not the case. He stated that Mr. Belendiuk only
21 | intended to be able to defend his own interests. Again, we
22 | believe that his interests can be defended through counsel.
23 | We do not believe that his participation in the depositions is
24 | necessary to -- Mr. Belendiuk as a limited party will still
25 | have the opportunity to be represented by counsel in the

1 depositions and trial, to file proposed findings and to file
2 reply findings. Now, it is important to remember that
3 Mr. Belendiuk has no actual stake in the outcome of this
4 proceeding. This, this proceeding is to determine the
5 qualifications of TDS to hold the Wisconsin 8 license.
6 Mr. Belendiuk has no interest in that outcome. Denying him
7 the right to attend the depositions will not therefore deny
8 him any due-process rights. Now, we recognize that Federal
9 Rule of Evidence 615 exempts a party who is a natural from,
10 from the rules on sequestration. However, we believe that a
11 strong showing can be made which nonetheless will allow for
12 the exclusion of Mr. Belendiuk from the depositions. Courts
13 have recognized that the Commission has broad discretion in,
14 in conducting hearings. In "Black Television Workshop of Los
15 Angeles," it was stated that courts have found that Federal
16 Rule of Evidence 615 which generally exempts parties from
17 sequestration orders does not necessarily apply with equal
18 force to individuals testifying at administrative proceedings
19 and the Commission there cited NLRB v. Stark (phonetic sp.).
20 The Commission has indicated that it viewed the importance of
21 testimony unshaped by previous witnesses outweighed the
22 possible hazards of sequestering witnesses who have an
23 interest in the proceedings. Moreover, Federal Rule of Civil
24 Procedure 26 allow for good cause a witness to be excluded
25 from depositions. Courts have concluded that when Federal

1 Rule of Civil Procedure 26 is interpreted along with Federal
2 Rule of Evidence 615, that a party may be excluded from a
3 deposition for good cause. While we recognize that this case
4 of whether a witness should be sequestered is a close case,
5 however, we do believe that good cause has been demonstrated.
6 We therefore respectfully request that Mr. Belendiuk be
7 sequestered during the depositions portion of this hearing.
8 Thank you.

9 JUDGE GONZALEZ: Would the parties that are joining
10 in the motion identify themselves now, please?

11 MR. HAWKINS: My name is Robert Hawkins. I'm here
12 on behalf of Portland Cellular Partnership.

13 MS. LANCETTI: My name is Luisa Lancetti on behalf
14 of Louisiana GSA, Inc.

15 MR. WEBER: Now, Kim Hardman (phonetic sp.) on
16 behalf of the Wisconsin 8 -- and Doug McFadden on behalf of --
17 Mobile Net are also joining this motion, however, they are not
18 present today.

19 JUDGE GONZALEZ: Would the other parties care to
20 identify themselves at this time before --

21 MR. CRISPIN: Your Honor, William Crispin and Dean
22 Verner here on behalf of Mr. Belendiuk.

23 MR. EMMONS: Nathaniel F. Emmons on behalf of
24 Telephone and Data Systems, Inc.

25 MR. SCHNEIDER: Mark D. Schneider on behalf of

1 United States Cellular Corporation.

2 MR. KIRKLAND: James A. Kirkland on behalf of --
3 Inc.

4 JUDGE GONZALEZ: Thank you. Mr. Crispin, I'll start
5 with --

6 MR. CRISPIN: Thank you, Your Honor.

7 JUDGE GONZALEZ: You want to respond?

8 MR. CRISPIN: First, I want to gently but firmly --
9 but before I actually begin my remarks, I want to gently but
10 firmly object to the motion that's been put on the record.
11 Your Honor, a lawyer is regarded as an officer of the court.
12 There's been no showing that Mr. Belendiuk has ever attempted
13 to disrupt or be mischievous regarding this case. As a matter
14 of fact, the presumption, Your Honor, is just the opposite.
15 When an officer of this court comes and testifies in good
16 faith and counsel for the Bureau or the plaintiff if you will
17 in this case has any evidence of any disruptions or mischief I
18 wish them to put that on the record as part of their good-
19 cause showing. They simply can't say that and then quit the
20 --

21 JUDGE GONZALEZ: Excuse me, I may have misunderstood
22 but I don't believe he made the allegation that this had
23 occurred already. He's trying to avoid the possibility of
24 such, of such an occurrence. I don't believe there's been any
25 allegation made that it has to date. Has there, Mr. Weber?

1 MR. WEBER: That is correct, Your Honor.

2 MR. CRISPIN: And therefore, Your Honor, we should
3 establish for the purpose of this hearing that there is no
4 evidence, there's no predicate for the statement. There is an
5 unfounded fear of that or an apprehension of that and nothing
6 else. If there's any evidence to the contrary, I'd like to
7 hear it today before we --

8 JUDGE GONZALEZ: Well, my understanding was there
9 was an apprehension or concern that it might be the case, not
10 necessarily be the case.

11 MR. CRISPIN: Your Honor, my -- I have two
12 difficulties with this motion. My first difficulty with this
13 motion is that it's nothing other than a late file petition
14 for reconsideration and I'd like to explain that. Number two,
15 Your Honor, there is no basis in the law for this motion and
16 I'll be glad to explain that as well. So, if I may begin with
17 my first point --

18 JUDGE GONZALEZ: Surely.

19 MR. CRISPIN: -- which is the point that this is
20 nothing than a late file petition for reconsideration. Your
21 Honor, when I first was hired as counsel for Mr. Belendiuk, I
22 appeared at a discovery meeting. It was attended to by all of
23 the parties to this case, or virtually all of the parties in
24 this case, including the Common Carrier Bureau. At that
25 meeting, my client was asked to participate in joint discovery

1 agreement. As Your Honor know, Your Honor executed then joint
2 discovery agreement in this case. We agreed to participate in
3 the joint discovery agreement and the joint discovery
4 agreement codified, in writing, our agreement to participate
5 in this joint discovery agreement was contingent on us being
6 granted limited party status in this case. Now, I was asked
7 at that meeting to explain just exactly what Mr. Belendiuk had
8 in mind. I said, I wanted Mr. Belendiuk at the table, at the
9 discovery and at the hearing phases of this case to confront
10 or rebut any adverse allegations that were made against him
11 both in the discovery phase of the case and in the trial
12 portion of this case. I was asked, Your Honor, to circulate a
13 copy of my consent motions to intervene and I did that. I
14 sent a copy of the consent motion to intervene to every single
15 party in this case. I received word back that no one objected
16 to it. Let me read you what I said in my consent motion to
17 intervene, page 3. "Mr. Belendiuk's participation will be
18 limited to confronting and rebutting any adverse allegations
19 made in the discovery and trial portions of this proceeding
20 concerning his conduct as Le's counsel. To do so he needs
21 party status, albeit limited, in both the discovery and trial
22 portions of this case. Fundamental due process requires
23 nothing less." With the agreement of the parties, Your Honor,
24 we filed a consent motion to intervene. You granted that
25 consent motion to intervene and let me read you the text of

1 your order. "For good cause shown it is ordered that the
2 consent motion to intervene filed by Arthur Belendiuk on June
3 1, 1994, is granted," and he is given me to intervene in this
4 proceeding for the limited purpose of confronting or rebutting
5 any adverse allegation which may or may not be made against
6 him in the discovery or trial portions of this proceeding with
7 respect to his conduct as counsel for La Star Cellular
8 Telephone Company. Now, once, once we were granted this party
9 status, we then produced documents, we waived certain work
10 product privileges that we had pursuant to the terms of our
11 agreement. We agreed to appear at deposition without a
12 subpoena because we were given party status. And now that we
13 have done all of those things, there is now what we would
14 politely call a renege. Now that we've done all these
15 things, we want an order that says Mr. Belendiuk is no longer
16 a party, he is not going to be given the right to confront or
17 rebut any adverse allegations made in the discovery and the
18 trial portions of this case. Now all of a sudden Mr.
19 Belendiuk is going to be treated as a witness and nothing more
20 than a witness. Your Honor, for good cause shown without
21 objection from the plaintiff's bar in this case, Mr. Belendiuk
22 was granted limited party status. Now, I submit to you, Your
23 Honor, if Mr. Belendiuk cannot attend the depositions and if,
24 and if I understand my opponent well, if I cannot advise Mr.
25 Belendiuk about any adverse allegations made with respect to

1 | his representations as La Star's counsel, regardless of which
2 | side makes it in this case should anyone choose to do that,
3 | then Mr. Belendiuk has been denied the one thing, the very
4 | thing you granted him in this order, to confront or rebut both
5 | in the discovery and trial portions of this case anything
6 | adverse said against him. Your Honor, this matter has been
7 | decided. This order was released on June the 3rd, 1994, 30
8 | days puts us through the July 4th weekend. This is not only a
9 | late file petition for reconsideration, this was the first
10 | time in my 12 years at the Commission that I have made an
11 | agreement with the Common -- with the Commission that the
12 | Commission has ever asked to look behind the agreement that we
13 | made after we have performed, after we produced the document
14 | pursuant to the joint discovery agreement, after we agreed to
15 | appear, after we waived some privileges and now all of a
16 | sudden everything that was written on paper, everything that
17 | was entered by Your Honor, is no longer on the table, it's
18 | gone. Why? Because, because the claim is made we never knew
19 | that you intended to appear at any of these depositions. What
20 | does it mean to confront or rebut any adverse allegations in
21 | the discovery and the trial portions of this proceeding? How
22 | is Mr. Belendiuk to preserve his good name and reputation if
23 | he cannot be present at the depositions, if I cannot advise
24 | him that certain allegations have been made with respect to
25 | his conduct? Your Honor, this is really simple. When this

1 case is over, you know, certain things will happen to TDS or
2 the plaintiff's side of this, but they're both still going to
3 be here. Mr. Belendiuk, as was correctly reported by the
4 Commission, has no direct interest in this case other than his
5 own good name and reputation. So, I do not buy into this
6 theory of disruption or mischief. I think there's been a
7 finding here that a lawyer, an individual lawyer, has the
8 right to be at these depositions, has the right to be at the
9 hearing, for the purpose of defending his good name. To
10 suggest that he's going to be influenced or change his
11 testimony, that just can't be accepted. Mr. Belendiuk enjoys
12 a better presumption than that. He is an officer of this
13 court and I am sure that if that same statement was made about
14 any other lawyer in this courtroom, any other lawyer in this
15 courtroom would react the same way that I'm reacting on behalf
16 of Mr. Belendiuk. I firmly but politely reject that. Your
17 Honor, the offer has been made, an order has been entered, it
18 is very clear on its face and this is a late file petition for
19 reconsideration.

20 Let me go on to my second point. What is the authority
21 to do this? Well, we know that if we looked at the FCC's
22 rules we don't find any authority for Your Honor to sequester
23 a party, a natural person party. And what I mean -- when I
24 say that, just make sure our terms are clear. I don't find
25 any authority for a judge to sequester an individual as

1 | opposed to a situation where you have a corporate entity or a
2 | partnership entity. There in that situation the judge can say
3 | designate somebody and the judge gets to regulate. But when
4 | you have a party, when you have a party, that party is
5 | entitled to the due process of being there. If something is
6 | going to say something against him, that party has a right to
7 | say uh-uh, I didn't do that. Now, we don't find any such
8 | authority in the FCC's rule but the FCC's rules do embrace the
9 | Federal Rules of Evidence and they say where our rules don't
10 | apply, Federal Rules of Evidence apply. Now, when we get to
11 | Rule 615, let's be very clear what Federal Rule 615 of the
12 | Federal Rules of Evidence says. It is very clear. Judge is
13 | not -- and we're talking about a judge as in federal judge, as
14 | in all judges -- a judge does not have authority to sequester
15 | a party, a natural person party. I represent Mr. Belendiuk
16 | personally. I do not represent the firm of Smith, Wick &
17 | Belendiuk. I entered my appearance that way, Your Honor, I
18 | moved to intervene on behalf of Mr. Belendiuk personally and
19 | Your Honor granted that intervention personally. So, there's
20 | no debate that I am here on behalf of a natural person party.
21 | No authority for the proposition that any type of judge has
22 | the ability to sequester a natural person party. Now, counsel
23 | mentions that there were some cases on point.

24 | Now, Your Honor, let's go over the chronology of how we
25 | got here. I received a call yesterday saying that there would

1 | be some kind of hearing on this matter tomorrow. And I got a
2 | call first thing this morning which I wasn't able to return
3 | until about 10 or 11 o'clock because I had meetings where I
4 | found out that this was going to be done today at 3 o'clock.
5 | But I did endeavor to read everything I could get my hands on
6 | even though I had about four hours' notice for this hearing.
7 | And the reason I came, Your Honor, is I think it's important
8 | you make this ruling because this is your order. I thought it
9 | was better that way than to have some other judge make the
10 | ruling, but that's a matter of preference. But let's look at
11 | these cases. There is an FCC case and it is -- there is this
12 | case "Black Television Workshop of Los Angeles," and Judge,
13 | I've got a copy of the case that I'd be able to submit Your
14 | Honor for his review. You will see in the case, Your Honor,
15 | footnote 20. Let me talk to you about this case. In this
16 | case, there was a witness, Your Honor, who was a director of a
17 | corporation. She was not a natural person party. She was a
18 | director of a corporation. At the hearing, this was not a
19 | discovery dispute, this was a hearing dispute, this woman --
20 | the judge ordered this woman to testify second, in effect
21 | sequestering her for a short period of time. Now, Your Honor,
22 | the first thing that you need to know is that this person was
23 | not a party to the case. She wasn't a party, she was a
24 | director of a corporate entity. There are different rules
25 | that apply. Let's be clear about that. The second thing is

1 | this woman, Your Honor, didn't cooperate. She demanded a
2 | subpoena for her testimony. Mr. Belendiuk made a deal in good
3 | faith with the Commission in which he would like to observe if
4 | the Commission would keep its end of the bargain. So, we're
5 | not asking for a subpoena now. We are simply saying we've
6 | made a deal with you, we wish to abide in good faith, please
7 | abide by the agreement with us if you would kindly. Now, the
8 | Commission --in this case the Commission held that what the
9 | judge did was proper under the circumstances. But again, this
10 | was not a natural person party so Rule 615 didn't apply, and
11 | this person did not act as a party, did not move to intervene
12 | as a party, this person was simply a director of a
13 | corporation. There were three other directors of the
14 | corporation and having one of the other directors testify
15 | first and being designated is something that we all do.
16 | That's something that happens in trials, both administrative
17 | trials and in trials in the federal courts. I might add here,
18 | Your Honor, in my 17 years of practice which -- I have never
19 | had a party sequestered, a natural person party, sequestered
20 | at either a deposition or at a trial. This will be the first
21 | time. I cannot find a reported case either in the FCC's
22 | cases, Your Honor, or in the federal cases that suggest that a
23 | natural party person can be sequestered. Now, Your Honor,
24 | there are a couple of NLRB cases that are referenced in
25 | footnote 20 of this FCC opinion. One of them is a case where

1 | someone didn't move to be a party, they were simply -- and the
2 | court upheld up the right of the NLRB to sequester this
3 | person. But the person didn't move to become a party, they
4 | were just a witness. So that case doesn't -- Your Honor.
5 | There is another case, Your Honor, which I'll be glad to
6 | submit to Your Honor where the, where the witness moved to
7 | become a party and there the NLRB tried to sequester this
8 | person and the court of appeal said uh-uh, not under Rule 615,
9 | can't do it, the person is a natural person party, a judge
10 | doesn't have authority. So we think the case law is very
11 | clear on this point. But even if the case law wasn't clear,
12 | Your Honor, you based on the agreement of the parties without
13 | opposition from anybody entered an order that said that Mr.
14 | Belendiuk could confront or rebut both in the discovery and
15 | the trial portions of this case and I submit the following
16 | question. How is he supposed to confront or rebut in the
17 | discovery portion of this case if he cannot be present and if
18 | I cannot tell him what occurred? Your Honor, we are simply
19 | ripping up your order, it's that simple. That's everything I
20 | have to say at this point.

21 | JUDGE GONZALEZ: Mr. Weber?

22 | MR. WEBER: Yes, I have a few comments I would like
23 | to make in response. First, in no way am I asking for
24 | reconsideration of the order which allowed Mr. Belendiuk to
25 | intervene in this proceeding. We of course were quite pleased

1 with his participation in, in coming to the, the discovery
2 agreement and we thank him for that and we also do not believe
3 that we are at this time failing to comply with the agreement.
4 Counsel seems to believe that we're trying to state that
5 Mr. Belendiuk is no longer a party. We are in no way trying
6 to argue that Mr. Belendiuk is no longer a party. All we're
7 saying is that Mr. Belendiuk -- his, his own personal presence
8 should not be in the deposition. He is perfectly right to
9 have counsel at this depositions. If Mr. Belendiuk was not a
10 party he would even have a right to have counsel at any
11 depositions. We are not claiming that Mr. Crispin has no
12 right to attend those depositions. As to the idea that he is
13 an officer of the court and he would not change his testimony,
14 I am in no way trying to besmirch Mr. Belendiuk and I fully
15 believe that he would, would still try to testify honestly and
16 to the best of his recollection. But it is only human nature
17 to have your memory influenced or otherwise changed by hearing
18 somebody else testify as to events -- and mainly because we
19 are talking of events that -- some of which happened seven
20 years ago and so memory itself can be a little sketchy and,
21 and there's no way that his memory can't be slightly
22 influenced by hearing people previous to him talk about those
23 events and that we just cannot allow. And we also -- as to
24 the whole idea of evidence of disruption, we're of course not
25 going to site that he, he disrupted the proceeding previously.

1 What, what we believe is, is possible is that while these
2 other witnesses are testifying about their dealings with
3 Mr. Belendiuk, they may be somewhat intimidated or otherwise
4 less forthcoming because he is in the room and that we can't
5 allow. I just -- in no way are we asking for reconsideration
6 of, of the order which allowed him to, to intervene. And even
7 though your order did specifically say he is allowed to
8 confront witnesses in the discovery period, he is still able
9 to confront those witnesses through counsel. Now, I would be
10 happy to work out some type of agreement with Mr. Crispin
11 which would allow him to discuss with Mr. Belendiuk anything
12 that -- the allegations the witnesses make about him or
13 Mr. Belendiuk will have -- we can agree to allow him to read
14 the depositions after he testifies himself. Now,
15 Mr. Belendiuk will be testifying relatively soon. He will
16 testify before any of the -- witnesses or TDS witnesses and
17 therefore I have -- I would have no objection to him reading
18 the depositions of those witnesses. We still have some
19 concern about him attending those depositions though.
20 Counsel --

21 JUDGE GONZALEZ: Well, if I may interrupt then.
22 Your concern seems to be really more the physical presence of
23 Mr. Belendiuk. He will be represented by counsel --

24 MR. WEBER: That is correct.

25 JUDGE GONZALEZ: -- so counsel will I assume --

1 MR. WEBER: Be able to confront the witness.

2 JUDGE GONZALEZ: -- to protect his interest to some
3 extent.

4 MR. WEBER: That is correct.

5 JUDGE GONZALEZ: So, it's actually pretty much the
6 physical presence of Mr. Belendiuk --

7 MR. WEBER: That is correct.

8 JUDGE GONZALEZ: -- that you find might be
9 intimidating for the other witnesses.

10 MR. CRISPIN: Your Honor --

11 JUDGE GONZALEZ: With, with that understanding, with
12 the understanding that Mr. Weber has made that, that your
13 client would have the opportunity to review the depositions,
14 you would be present -- physically present at the depositions,
15 represent his interest, why are you so concerned that he will
16 not have the opportunity then to respond to those allegations
17 at a later date if necessary?

18 MR. CRISPIN: Well, this is the first time I've
19 heard that, but let me, let me make a point here. Your Honor,
20 if I can tell Mr. Belendiuk everything that happened and if he
21 can read the depositions, then I guess I don't get it, okay?

22 JUDGE GONZALEZ: I don't --

23 MR. CRISPIN: If, if Mr. Belendiuk can read the
24 depositions after the fact and if Mr. -- if I can tell
25 Mr. Belendiuk everything that happens, then I don't understand

1 | why Mr. Belendiuk who is a party who's entitled to be in that
2 | room -- federal rules so provide, okay?

3 | JUDGE GONZALEZ: Well, I would -- again, I don't
4 | like to interrupt, but he is a limited party and I think, I
5 | think that is a distinction that should -- that, that can be
6 | made and should be made.

7 | MR. CRISPIN: For the limited party for --

8 | JUDGE GONZALEZ: And also too a further distinction
9 | is that I think we all recognize that Mr. Belendiuk is a
10 | significant factor in this proceeding. Certainly, the
11 | Commission has made it clear that they consider him to be a
12 | very significant witness as to what actually occurred. I
13 | reread -- I had an opportunity to reread the hearing
14 | designation order and it certainly was very clear to me that
15 | the Commission finds his role pivotal and very significant.
16 | So, I can sympathize with Mr. Weber's concern that just his
17 | physical presence could be an intimidating factor to the other
18 | witnesses. My concern was how -- and you raised it in
19 | responding to the motion -- how can he protect his interests,
20 | how can he be made aware of the allegations. Certainly, if
21 | he's given the opportunity to be represented by counsel at the
22 | depositions, if he's then given the opportunity to read the
23 | depositions, he will have every opportunity when he is
24 | presented as a witness to respond to those allegations. I
25 | don't see where his interests are going to be compromised,